



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 06-57

SUBJECT: WENDY RUDDER
DEPUTY PUBLIC ADMINISTRATOR
LINCOLN COUNTY

A. JURISDICTION:

In her capacity as Lincoln County Deputy Public Administrator, Wendy Rudder is a public employee as defined by NRS 281.436. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion (complaint) 06-57, submitted by Sheila S. Davis and received August 21, 2006 (TAB B)
- Reviewed *Waiver of Statutory Time Requirement* submitted by Ms. Rudder and received September 5, 2006; reviewed response submitted by Lincoln County District Attorney Philip Dunleavy on behalf of Ms. Rudder and received September 14, 2006 (TAB C)
- Reviewed copies of the following documents (TAB D):
 - *Petition for Admission of Will for Probate* in the matter of the estate of Jimmy Creech, filed on April 11, 2006, with the Seventh Judicial District Court of Lincoln County;
 - Affidavits of David Best, Doreen Brown and Harry R. Brown filed on April 11, 2006, with the Seventh Judicial District Court of Lincoln County;
 - Letter dated April 18, 2006, from the Seventh Judicial District Court, Dept. 1, denying the *Petition for Admission of Will for Probate*;
 - Purported *Last Will and Testament* of Jimmy Creech;
 - *Certificate of Death* issued by the Nevada Department of Human Resources, Division of Health;
 - *Notice of Estate Sale* published in the *Lincoln County Record* newspaper; and
 - Various invoices for services rendered by the deputy public administrator on behalf of the estate of Jimmy Creech

- Inventory report of the estate from Ms. Rudder
- Interim accounting of funds from estate yard sale including bank records and fund claim forms
- Reviewed Nevada Revised Statutes (NRS) Chapter 253, Public Administrators and Guardians and contract appointing Ms. Rudder as Lincoln County deputy administrator and deputy public guardian (TAB E)
- Reviewed *White Pine, Lincoln and Eureka Counties Phone Directory* yellow pages, commercial moving companies and storage facilities (excerpted, TAB F)
- Reviewed prior relevant opinions of the Nevada Commission on Ethics (TAB G)

C. RECOMMENDATIONS:

Based on the results of investigation, it is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (1)
- NRS 281.481 (2)

SPECIFIC REASON:

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the above provisions of NRS Chapter 281.

Based on the results of investigation, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (3)
- NRS 281.505

SPECIFIC REASON:

Sufficient credible evidence does not exist to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the above provisions of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):

The complaint, submitted by Sheila S. Davis, was received August 21, 2006. The complaint alleges violations of NRS 281.481(1), 281.481(2), 281.481(3), and 281.505 by Ms. Rudder. The following is the substance of the complaint:

On February 4, 2006, after an extended illness, Jimmy Creech was discovered deceased in his apartment at Carefree Living in Caliente, Nevada. Before Mr. Creech died, Ms Davis promised him that she would look after his possessions upon his death. Mr. Creech agreed and intended for Ms. Davis to disperse his property as he wanted.

Upon Mr. Creech's death, Ms. Davis presented, to Ms. Rudder and the police, a copy of a document purported to be the last will and testament of Jimmy Creech. Ms. Davis was subsequently informed that Mr. Creech had not signed the will. Ms. Davis offered to assist Ms. Rudder to inventory, package, and transport Mr. Creech's property without charge, but Ms. Rudder never responded to her offer.

Ms. Rudder waited until the beginning of March to move Mr. Creech's personal belongings. When the owner of the apartment informed Ms. Rudder that Mr. Creech's property would be given to Ms. Davis if not removed by early March, District Attorney Dunleavy informed the owner that the apartment was sealed and nothing could be removed by anyone other than Ms. Rudder. Ms. Rudder's nephew, Joshua Nay, boxed up and transported Mr. Creech's property to a storage facility owned by Ms. Rudder in Alamo, fifty miles away from Caliente.

Ms. Davis requested Ms. Rudder to inform her when Mr. Creech's personal belongings would be available for sale. Ms. Rudder told her a sale would occur on August 2, 2006 at 11:00 a.m. Ms. Davis was unable to attend the estate sale, but a friend arrived at the sale at approximately 10:30 a.m. to find that almost everything was gone. Ms. Davis's friend was required to sign for any items she purchased, even though no other buyer had been required to sign anything.

Mr. Creech's personal belongings included a grinding stone and an eagle claw and feathers that should have been given to the Indian community, an antique dresser and an old gun that belonged to friends, an old saddle, a quilt sown by Mr. Creech's mother. These items were sold before 11:00 a.m. or were not in the sale at all. Several unnecessary expenses were incurred after Ms. Rudder took charge of the estate. Ms. Rudder charged \$70.00 per month for her storage unit. Ms. Rudder's nephew charged \$460.00 to box up and transport Mr. Creech's belongings. Ms. Rudder's fee for her time was \$ 150.00. Utilities cost the estate over \$375.00.

E. SUMMARY OF SUBJECT'S RESPONSE:

Ms. Rudder submitted a *Waiver of Statutory Time Requirement* on September 5, 2006. A response, submitted by Lincoln County District Attorney Philip Dunleavy on behalf of Ms. Rudder, was received September 14, 2006. The following is the substance of Mr. Dunleavy's response:

Lincoln County is one of only three counties where the District Attorney's office is also the ex officio public administrator pursuant to NRS 253.010(4), and Ms. Rudder works under Mr. Dunleavy's authority. He believes everything Ms. Rudder did was done in

good faith with no intent to take any unfair advantage from her position. Ms. Rudder is a highly regarded, honest, and hardworking businesswoman who puts in a considerable time and effort to help the county deal with the often complex issues of the public administrator.

Ms. Rudder contacted Mr. Dunleavy to obtain permission to use her storage facility in Alamo. Mr. Dunleavy was remiss in not knowing this referred to a commercial storage facility as opposed to residential storage. There is very limited commercial storage in the county. The county does not provide a storage facility for the public administrator. He has confirmed that there was no other commercial storage available at the time of this instance and that there is seldom a storage unit vacancy anywhere in the county.

The employment of Ms. Rudder's nephew was a mistake. Ms. Rudder was not aware of NRS 281.210, wherein the nephew is defined within the third degree of consanguinity. Ms. Rudder was not physically able to empty the apartment herself. Ms. Rudder believed she was doing the right thing by asking someone she knew and trusted, who was of the highest integrity, to do the work. She did not believe it was prudent to ask just anyone. Her nephew, Josh Nay and his wife, had the ability to rent a trailer and truck and were willing to remove the estate possessions, clean the apartment and travel to Alamo to put the items into storage. This will not reoccur and only happened because Ms. Rudder was not aware of the nepotism law at the time she hired Mr. Nay. It is quite difficult in the rural areas to find good, honest, unemployed or otherwise available assistance.

Mr. Dunleavy should have asked more questions about the storage in Alamo. He failed to advise Ms. Rudder of the nepotism laws.

Ms. Rudder also submitted a response as an attachment to Mr. Dunleavy's response. The following is the substance of Ms. Rudder's response:

Ms. Rudder consulted with Mr. Dunleavy regarding the unsigned will. Mr. Dunleavy determined that the will was not valid and directed Ms. Rudder to inform Ms. Davis that Ms. Davis would need to petition the court if Ms. Davis wished to become the administrator of the estate. Ms. Rudder spoke with Ms. Davis regarding the will and told her she would need to file with the court to be appointed the administrator and would need to retain counsel to assist her.

The rent for Mr. Creech's apartment was paid until March 1. The possessions of the estate should have remained at that apartment until the rent was used up. Ms. Rudder left the utilities on because there was still food in the refrigerator, and she believed Ms. Davis would be appointed the administrator and would need light and water to clean up. Ms. Rudder learned that the court had determined that the will was not valid, she proceeded to arrange an estate sale in order to pay for the utilities and the cost of moving and storing the estate. Ms. Rudder spoke with Ms. Davis about the need to do an estate sale, but did not deem it necessary to have Ms. Davis participate in any of the process.

There was no eagle claw or eagle feathers found among Mr. Creech's belongings. There was a grinding stone found and it was removed from the sale. Ms. Rudder stated that she would give both the grinding stone and some arrowheads she found to the Bureau of Land Management (BLM) or to the appropriate government authority as directed by the BLM. Everything else was placed in the sale; nothing was withheld from the sale.

Ms. Rudder claimed that she exhausted attempts to locate a storage facility or a reputable mover for the property of the estate. She believed the items would not need to be stored for more than two months, but the items were stored for more than five months at the storage facility that she owned. The only storage fees Ms. Rudder received were for two months in the total amount of \$140.00.

Ms. Rudder believed leaving the utilities on until March 1, 2006 would give time to resolve whom the administrator of the estate would be and allow the authorized administrator to enter the property with utilities on. The City of Caliente was supposed to have turned the utilities off after the first of March. The utilities bill balance was \$211.85 as of February 22, 2006. Ms. Rudder was required by the City of Caliente to sign a guarantee for the unpaid February 2006 bill, and by the time she discovered the utilities had not been shut off, late fees were included in the unpaid balance. Ms. Rudder stated that there were no funds in the estate, so she made arrangements for social services to pay the utilities bill.

Ms. Rudder did not do anything for personal gain for herself or anyone in her family. She stated that she was honored to serve in a capacity to aid those that had no one to help them and did what she believed was in the best interest of everyone involved. Ms. Rudder stated that she has always exercised the highest integrity in her dealings with others and believes exercising a fiduciary duty should be done with the utmost care and respect.

F. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.¹

(b) “Unwarranted” means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

* * * * *

NRS 281.505 Contracts in which public officer or employee has interest prohibited; exceptions.

1. Except as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

¹ NRS 281.501 (8) states: “... As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

G. RESULTS OF INVESTIGATION:

Factual History:

Ms. Rudder has a contract with the Lincoln County District Attorney appointing her to the position of Lincoln County deputy public administrator/deputy public guardian. The county pays her \$150.00 per month, and she is authorized to charge each estate an additional \$150.00 to secure the property and conduct the disposition of the estate. During a telephone interview, Ms. Rudder stated that it is very seldom that the additional fee charged to the estate is paid, due to the fact that, in most of these cases, the estate has no assets. Ms. Rudder stated that, in the instance where the estate has no assets, the county pays most, if not all the fees associated with the final disposition of the estate.

A review of the *White Pine, Lincoln and Eureka Counties Phone Directory*, yellow page listings of commercial moving companies and storage facilities, indicates that there are no moving companies and a very limited number of storage facilities. There are three storage facilities located in or near Caliente. An attempt was made to contact all three storage facilities to determine availability of storage units during March and April 2006. The owner of *J & N Storage*, located in Pioche, stated that there have been no vacancies at her storage “for years”, and that the other two storage facilities in the area have the same status of no vacancies. The owner also stated that she has a waiting list of customers, so that as a storage unit is vacated, there are already customers waiting to occupy the unit. The owner of *R & L Storage*, located in Caliente, stated that she keeps a telephone log of all calls that she receives, but no record of receiving a call from a public administrator in March or April 2006. She agreed that storage is generally at 100% capacity, but she stated that she has six “personal” storage units that she is able to use when there is a need for short-term storage.

As of the date of this report, Ms. Rudder has received no fees from the Creech estate. Fees paid by the county include: \$140.00 paid to Ms. Rudder for two months storage at *B & W Wash and Store*, a storage facility owned by Ms. Rudder located in Alamo; \$460.00 paid to her nephew and his wife, Joshua and Brittney Nay, for transporting the property of the estate to the storage facility; and the utility bill of \$378.58 paid to Caliente Public Utilities.

H. CONCLUSION:

Allegations regarding NRS 281.481(1):

By using a storage facility that she owned, Ms. Rudder may have sought an economic opportunity that might tend improperly to influence her, in her position as deputy public administrator, to depart from the faithful and impartial discharge of her public duties.

The Executive Director finds that credible evidence **DOES EXIST** to substantiate a potential violation of NRS 281.481(1). Accordingly, the Executive Director recommends that the panel find just and sufficient cause does exist for the Commission to hold a hearing and render an opinion regarding whether Ms. Rudder violated the provisions of NRS 281.481(1).

Allegations regarding NRS 281.481(2):

Ms. Rudder is alleged to have used her position in government to secure or grant unwarranted advantages for herself, a business she owes, and her nephew to whom she has a commitment in a private capacity as defined by subsection 8(b) of NRS 281.501.

The conduct that allegedly benefited Ms. Rudder's business was that she stored the property of the estate at her business. The conduct that allegedly benefited Ms. Rudder's nephew is that she hired him and his wife to inventory and remove the Creech estate property, clean the apartment, and transport the property to Alamo for storage. Ms. Rudder received \$140.00 in storage fees covering a two-month period, although, according to Ms. Rudder, the property has been stored at her facility for over five months. Her nephew and his wife were paid \$460.00 for their services.

The Executive Director finds that there is credible evidence to substantiate a potential violation of NRS 281.481(2). Accordingly, the Executive Director recommends that the panel find just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion regarding whether Ms. Rudder violated the provisions of NRS 281.481(2).

Allegations regarding NRS 281.481(3):

As Lincoln County deputy public administrator, Ms. Rudder is alleged to have entered into a contract as an agent of government between Lincoln County and *B & W Wash and Store*, which she owns, in violation of NRS 281.481(3). This investigation revealed no evidence that Ms. Rudder acted as an agent of the county in arranging for the items to be stored at her facility. In fact, the evidence shows that she sought and received Mr. Dunleavy's permission to use her facility. Accordingly, the Executive Director finds that credible evidence **DOES NOT EXIST** to substantiate a potential violation of NRS 281.481(3).

The Executive Director recommends that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Ms. Rudder violated the provisions of NRS 281.481(3).

Allegations regarding NRS 281.505:

It has also been alleged that Ms. Rudder entered into a contract between the county and her private business in violation of NRS 281.505. There is no evidence that a written contract was executed between the county and Ms. Rudder. Nonetheless, past Commission Opinions (In re *Harris* CEO 02-08) have granted an exception to the prohibition of NRS 281.505 where competitive bidding was not required for awarding the contract, the sources of supply are limited, and there was no evidence that the public officer took part in developing the contract plans or specifications.

With regard to the storage arrangement between *B & W Wash and Store* and the Lincoln County public administrator's office, the sources of supply in Lincoln County for storage services have been limited as mentioned previously in this report. Presently, the *B & W Wash and Store*

located in Alamo, is one of only four such facilities located in Lincoln County as advertised in the *White Pine, Lincoln and Eureka Counties Phone Directory*.

Further, although the arrangement between *B & W Wash and Store* and the Lincoln County public administrator's office was not a result of an open and competitive bidding process, NRS 332.039 (bidding procedures for local governments) is silent regarding any requirement for entering into a contract without advertising where the estimated amount required to perform the contract was \$10,000 or less. This practice was confirmed in a telephone conversation with Lincoln County Assistant District Attorney Dylan Frehner.

Although Ms. Rudder was a party to the arrangement between the Lincoln County public administrator's office and *B & W Wash and Store*, this was only a one-time usage of her storage facility and not an ongoing contractual commitment that would necessitate contract plans and specifications. Therefore, there is no evidence that Ms. Rudder participated in any contract plans and specifications regarding providing storage facilities for Lincoln County or that she solicited such business from Lincoln County. Accordingly, the Executive Director finds that credible evidence **DOES NOT EXIST** to substantiate a potential violation of NRS 281.505.

The Executive Director recommends that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Ms. Rudder violated the provisions of NRS 281.505.

Prepared by: Matt C. DiOrio DATED: November 8, 2006
MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: L. Patrick Hearn DATED: November 8, 2006
L. PATRICK HEARN
EXECUTIVE DIRECTOR